

# Exhibit 1



A new climate of fairness.

## Fair Shake

Environmental Legal Services

November 4, 2015

### Pittsburgh

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*Sent via Certified Mail, return receipt requested*

Stewart Fletcher  
Vice President – General Manager  
Heritage Thermal Services  
1250 St. George Street  
East Liverpool, Ohio 43920

**Re: Notice of Intent to File a Citizen Suit for Ongoing Violations of the Clean Air Act and the Ohio Air Pollution Control Act at Heritage Thermal Services' Hazardous Waste Incinerator in the city of East Liverpool, Columbiana County, Ohio.**

Dear Mr. Fletcher and Each of the Persons Identified on the Attached Notice List:

We are writing on behalf of our client, Save Our County, Inc., to provide you with notice of Save Our County's intent to file suit for significant ongoing violations of The Clean Air Act (CAA) and the Ohio Air Pollution Control Act by Heritage Thermal Services (Heritage) at its hazardous waste incinerator located in Columbiana County, Ohio. Heritage has self-reported numerous violations of the emissions standards within its Title V air permit, for multiple pollutants and standards, including nitrogen oxide (NO<sub>x</sub>), sulfur dioxide (SO<sub>2</sub>), and opacity.

Heritage's violations of the CAA, The Ohio Air Pollution Control Act, and its Title V permit have injured and will continue to injure the health, environmental, and aesthetic interests of Save Our County and its members. Redressing these violations is likely to redress the injuries of Save Our County and its members. We provide this 60-day notice pursuant to section 304(b) of the CAA.<sup>1</sup> We are writing to notify you that Save Our County intends to file suit in the applicable federal district court any time after the sixty (60) day notice period has concluded to enjoin the violations described below, ensure future compliance, seek civil penalties, recover attorney fees and the costs of litigation, and obtain other appropriate relief as authorized by section 304(a)(1) and (3), (d) of the CAA.<sup>2</sup>

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<sup>1</sup> 42 U.S.C. § 7604(b); 40 C.F.R. § 54.3.

<sup>2</sup> 42 U.S.C. § 7604(a), (d).

## **I. Persons Giving Notice**

Save Our County, Inc.  
P.O. Box 1242  
East Liverpool, OH 43290

Save Our County, Inc. has organizational members who live, work, and recreate in and around East Liverpool, Ohio, and who breathe in or are otherwise exposed to the harmful pollutants emitted by Heritage's hazardous waste incinerator. Save Our County, Inc., is an Ohio nonprofit corporation based in East Liverpool, Ohio. It formed for the specific purpose of opposing the opening and operation of Heritage Thermal Services (then known as Waste Technology Industries), the hazardous waste incinerator in East Liverpool at issue in this Notice.

## **II. Background**

The Clean Air Act was enacted, among other things, to "protect and enhance the quality of the Nation's air resources so as to promote the public health and welfare and the productive capacity of its population."<sup>3</sup> The Act requires the EPA to set National Ambient Air Quality Standards (NAAQS) for six common air pollutants.<sup>4</sup> The six common air pollutants for which EPA sets NAAQS include SO<sub>2</sub>, NO<sub>x</sub>, and particulate matter.<sup>5</sup> The EPA refers to these pollutants as "criteria" pollutants, and regulates them by developing human health-based and environmentally-based criteria.<sup>6</sup> The CAA requires each state to adopt, and submit to EPA, State Implementation Plans (SIPs) providing for implementation, maintenance, and enforcement of the NAAQS promulgated by EPA pursuant to Section 109 of the Act.<sup>7</sup> Upon EPA approval, SIP requirements are federally enforceable under Section 113 of the CAA.<sup>8</sup> The EPA originally approved Ohio's permit-to-install rules at OAC 3745-31 as part of the federally enforceable Ohio SIP on October 31, 1980.<sup>9</sup> Since then, the EPA has approved several additions and revisions to OAC 3745-31. OAC Rule 3745-31-05(A)(3) is part of this approved SIP, and requires that the installation or modification of an air contaminant source employ Best Available Technology (BAT).

A "hazardous waste incinerator" is defined under the CAA and its regulations as a device "that burns hazardous waste at any time," and "includes all associated firing systems and air pollution control devices, as well as the combustion chamber equipment."<sup>10</sup> Heritage Thermal

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<sup>3</sup> 42 U.S.C. § 7401(b)(1).

<sup>4</sup> See 42 U.S.C. § 7409(a).

<sup>5</sup> See 42 U.S.C. §§ 7511-7514a; See also EPA, *What Are the Six Common Air Pollutants?* Found online at <http://www3.epa.gov/airquality/urbanair/>.

<sup>6</sup> *Id.*

<sup>7</sup> 42 U.S.C. § 7410.

<sup>8</sup> 40 C.F.R. § 52.23.

<sup>9</sup> 45 Fed. Reg. 72119 (October 31, 2015).

<sup>10</sup> 40 C.F.R. § 63.1201.

Services operates a commercial hazardous waste incinerator along the Ohio River in East Liverpool, Ohio. The hazardous waste incinerator has been in operation for more than 20 years, and incinerates hazardous waste by thermal oxidation in a rotary kiln-based incineration system. The facility is a major source of air emissions operating under a state-issued Title V Permit, and has the potential to emit, among other pollutants, up to 138.94 tons per year of NO<sub>x</sub>, 49.76 tons per year of SO<sub>2</sub>, and 106.78 tons per year of carbon monoxide.<sup>11</sup>

The facility is located on the bank of the Ohio River at the point where Ohio, West Virginia, and Pennsylvania meet. The facility was installed approximately 1,100 feet from an elementary school and 320 feet from the nearest home in a low income, minority neighborhood.<sup>12</sup> The neighborhood closest to the facility sits at roughly the same elevation as the top of Heritage's incinerator stack.<sup>13</sup> Although the school is no longer in operation, the surrounding neighborhood remains populated. Heritage's facility has been the target of many health and environmental groups (including Save Our County) that attempted to stop the facility from operating, or at the very least, to ensure compliance with its state and federally issued permits.

### **III. Violations of the Clean Air Act and The Ohio Air Pollution Control Act**

Section 304(a) of the Clean Air Act, commonly referred to as the citizen suit provision, allows a person to commence a civil action against any person who has violated "an emission standard or limitation under this chapter."<sup>14</sup> An "emission limitation" and "emission standard" are defined as any requirement under 42 U.S.C. § 7411 or § 7412, and "any applicable State implementation plan approved by the Administrator, any permit term or condition, and any requirement to obtain a permit as a condition of operations."<sup>15</sup> Thus, Save Our County may bring suit against Heritage for violating applicable conditions of the Ohio SIP and the facility's Title V permit, including operational conditions.

The CAA prohibits major sources of air emissions to operate except in compliance with a Title V permit.<sup>16</sup> The EPA fully approved Ohio's Title V program, effective October 1, 1995.<sup>17</sup> OAC Rule 3745-77-02(A)(1) requires that each Title V permit include emissions limitations and standards, including operational requirements and limitations, to ensure compliance with applicable emissions requirements.

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<sup>11</sup> See Appendix A, Heritage Thermal Services' Title V PTO Application, 0215020233, submitted July 15, 2013.

<sup>12</sup> Schannauer, *Issues in Environmental Law Science and Policy in Risk Assessments: The Need for Effective Public Participation*, 24 Vt. L. Rev. 31, 34 (1999).

<sup>13</sup> *Id.*

<sup>14</sup> 42 U.S.C. § 7604(a)(1).

<sup>15</sup> 42 U.S.C. § 7604(f).

<sup>16</sup> 42 U.S.C. 7661a(a); 40 C.F.R. § 70.7(b).

<sup>17</sup> 60 Fed. Reg. 42045 (August 15, 1995).

Heritage's Title V permit was renewed on December 22, 2008, with an effective date of January 12, 2009, and an expiration date of January 12, 2014. The permit is currently administratively extended while the Ohio EPA reviews Heritage's timely-submitted renewal application.

The emissions limitations within Heritage's Title V permit for SO<sub>2</sub> and NO<sub>x</sub> were established by the Ohio EPA as reflective of the Best Available Technology pursuant to OAC Rule 3745-31-05(A)(3), and require continuous compliance. Heritage is required to submit quarterly Excess Emissions Reports that identify, among other things, the times of excess short-term emissions of SO<sub>2</sub> and NO<sub>x</sub>. These reports measure readings above the limits of 11.34 lbs of SO<sub>2</sub> per hour and 28.36 lbs of NO<sub>x</sub> per hour. Heritage is also required to ensure that particulate emissions from any stack will not exceed 20% opacity, as a 6-minute average, pursuant to their Title V permit, and OAC Rule 3745-17-07(A)(1)(a). These Quarterly Reports also include Continuous Opacity Monitor readings above 20% opacity, as a 6-minute average.

Heritage has been a habitual violator of the Clean Air Act, the Ohio Air Pollution Control Act, and its Title V permit. Heritage has been listed as a High Priority Violator by the U.S. EPA for the last nine quarters, through September of 2015.<sup>18</sup> In response, the Ohio EPA has issued notices of violation and entered into consent agreements with Heritage, and the U.S. EPA has entered into consent agreements for Heritage's consistent violations of its air quality obligations. Heritage has been cited for numerous past violations of its permitted emissions and operating standards for NO<sub>x</sub>, SO<sub>2</sub>, and opacity, including, but not limited to, the following:

- On November 16, 2009, Ohio EPA issued Heritage an NOV for SO<sub>2</sub> exceedances for the third quarter (July 1–September 30) of 2009.<sup>19</sup>
- On June 14, 2010, based on the 2010 first quarter (January 1–March 31) Excess Emissions Report, Ohio EPA issued Heritage an NOV for exceedances of short-term emissions limitations for SO<sub>2</sub>, NO<sub>x</sub>, and total hydrocarbons (THC).<sup>20</sup>
- On April 19, 2010, Ohio EPA issued Heritage an NOV for exceedances of SO<sub>2</sub>, NO<sub>x</sub>, THC, carbon monoxide (CO), hydrochloric acid (HCl), and opacity limitations.<sup>21</sup>
- On February 15, 2011, based on the 2010 fourth quarter (October 1–December 31) Excess Emissions Report, Ohio EPA issued Heritage an NOV for exceedances of short-term limitations for NO<sub>x</sub> and THC.<sup>22</sup>
- On June 3, 2011, based on the 2011 first quarter Excess Emissions Reports, Ohio EPA issued Heritage an NOV for exceedances of short-term limitations for NO<sub>x</sub>, SO<sub>2</sub>, THC, and opacity limitations.<sup>23</sup>

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<sup>18</sup> See <http://echo.epa.gov/detailed-facility-report?fid=110027242320#pane3110027242320>

<sup>19</sup> See Appendix B, Ohio EPA Notice of Violation, dated November 16, 2009.

<sup>20</sup> See Appendix C, Ohio EPA Notice of Violation, dated June 14, 2010.

<sup>21</sup> See Appendix D, Ohio EPA Notice of Violation, dated April 19, 2010.

<sup>22</sup> See Appendix E, Ohio EPA Notice of Violations, dated February 15, 2011.

<sup>23</sup> See Appendix F, Ohio EPA Notice of Violation, dated June 3, 2011.



These enforcement measures, however, have not resulted in compliance. Quarterly Excess Emissions Reports up through 2015 show that Heritage has continued to have issues in complying with their short-term emissions limitations for SO<sub>2</sub>, NO<sub>x</sub>, and THC, as well as their opacity limitation.

In July of 2013, a horrible explosion occurred at the facility that resulted in the release of a cloud of ash that covered roughly 80 acres of the surrounding community.<sup>24</sup> The community received notices from the facility telling them to not eat any vegetables that they had grown and to drain their pools. On August 5, 2013, the Ohio EPA issued a mere Notice of Violation to Heritage, determining that the ash release of July 13, 2013, caused a public nuisance in violation of OAC Rule 3745-15-07.<sup>25</sup> The Notice required WTI to report the methodology in determining that 761 lbs of ash were released, and to submit a plan that outlines how Heritage will ensure that a similar incident won't happen again.<sup>26</sup> Currently, the U.S. EPA is in talks with Heritage about the ash incident and its root causes. On March 23, 2015, the U.S. EPA issued a Finding of Violation (FOV) that detailed violations of 14 different standards and limitations required by their Title V permit and the CAA regulations.<sup>27</sup> Among the violations noted were repeated and continuous THC emission rate exceedances dating back to November of 2010.<sup>28</sup> The U.S. EPA and Heritage's talks are ongoing, and it remains unclear what action the EPA will ultimately take. However, neither the Ohio EPA nor the U.S. EPA has sought, nor are they currently seeking, penalties or formal injunctive relief for Heritage's repeated and continued SO<sub>2</sub>, NO<sub>x</sub>, and opacity violations, which have occurred continuously and in addition to the ash release.

As described below, Heritage has continuously violated its Title V permit conditions and the Clean Air Act related to the NO<sub>x</sub>, SO<sub>2</sub>, and opacity limitations within their Title V permit. These requirements are enforceable standards and limitations under the CAA's citizen suit provision, and Heritage is liable for up to 37,500 dollars in penalties for *each day* that *each violation* occurred and continues to occur.<sup>29</sup>

#### A. Nitrogen Oxide (NO<sub>x</sub>) Violations

Excess NO<sub>x</sub> in the ambient air can cause serious human health problems. Excess emissions of NO<sub>x</sub> increase the amount of acid rain and ground level ozone, which can cause respiratory inflammation, difficulty breathing, and lung damage. NO<sub>x</sub> emissions also contribute to fine

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<sup>24</sup> East Liverpool Ash Cloud Investigated (July 15, 2013, 12:51 PM), found online at: <http://wkbn.com/2013/07/15/ash-cloud-investigated/>

<sup>25</sup> Appendix G, Ohio EPA Notice of Violation, dated August 5, 2013.

<sup>26</sup> *Id.*

<sup>27</sup> Appendix H, US EPA Finding of Violation, dated March 23, 2015.

<sup>28</sup> *Id.* at 7-8.

<sup>29</sup> 42 U.S.C. § 7413(b) and 7604(a); 40 C.F.R. §§ 19.2 and 19.4.

particles in the atmosphere, water quality deterioration, and visibility impairment.<sup>30</sup> Additionally, NO<sub>x</sub> reacts with ammonia and moisture to form small particles. These particles penetrate into sensitive parts of the lungs and cause or worsen respiratory disease.<sup>31</sup>

Heritage's Title V permit limits NO<sub>x</sub> emissions from the stack to 28.36 pounds per hour and requires continuous compliance.<sup>32</sup> The 2011, 2012, 2013, and 2014 Quarterly Excess Emission Reports<sup>33</sup> submitted by Heritage indicate that on approximately 175 occasions the NO<sub>x</sub> emissions exceeded the 28.36 pounds per hour standard, as outlined in the table below:

Table 1: NO<sub>x</sub> Emissions Exceedances

Date	Time	Duration (min.)	Violation Type	Reading (Max.)	Max. Limit
4/1/11	18:30	56	NOX (lb/hr)	34.00	28.36
4/9/11	2:54	4	NOX (lb/hr)	34.00	28.36
4/9/11	15:12	11	NOX (lb/hr)	28.70	28.36
4/10/11	1:56	10	NOX (lb/hr)	28.50	28.36
4/11/11	21:10	92	NOX (lb/hr)	33.90	28.36
4/11/11	22:50	39	NOX (lb/hr)	30.20	28.36
4/27/11	19:56	6	NOX (lb/hr)	29.00	28.36
5/5/11	22:39	51	NOX (lb/hr)	30.70	28.36
5/6/11	0:45	16	NOX (lb/hr)	29.50	28.36
5/6/11	1:07	32	NOX (lb/hr)	29.80	28.36
5/6/11	5:30	49	NOX (lb/hr)	34.70	28.36
5/9/11	20:48	60	NOX (lb/hr)	33.50	28.36
6/8/11	12:13	48	NOX (lb/hr)	36.00	28.36
6/15/11	16:20	8	NOX (lb/hr)	28.80	28.36
6/16/11	22:59	65	NOX (lb/hr)	31.80	28.36
6/24/11	22:30	19	NOX (lb/hr)	28.90	28.36
7/20/11	5:39	2	NOX (lb/hr)	28.80	28.36
7/20/11	5:42	1	NOX (lb/hr)	28.50	28.36
7/25/11	4:26	6	NOX (lb/hr)	28.50	28.36
8/30/11	1:42	38	NOX (lb/hr)	34.50	28.36
8/31/11	18:30	5	NOX (lb/hr)	28.90	28.36
9/3/11	0:56	33	NOX (lb/hr)	29.10	28.36
9/3/11	5:27	19	NOX (lb/hr)	29.10	28.36
9/8/11	5:24	7	NOX (lb/hr)	29.10	28.36

<sup>30</sup> See <http://www3.epa.gov/airquality/nitrogenoxides/>

<sup>31</sup> See <http://www3.epa.gov/airquality/nitrogenoxides/health.html>

<sup>32</sup> Appendix I, Final Air Pollution Control Title V Permit, Facility ID: 021502033, at 48.

<sup>33</sup> The Second Quarter 2011 through Third Quarter 2014 Excess Emissions Reports are attached as Appendix J.

9/8/11	23:02	5	NOX (lb/hr)	29.10	28.36
9/8/11	23:26	10	NOX (lb/hr)	30.30	28.36
10/4/11	19:05	139	NOX (lb/hr)	34.10	28.36
10/17/11	7:49	26	NOX (lb/hr)	31.90	28.36
10/23/11	12:31	17	NOX (lb/hr)	29.70	28.36
10/23/11	14:13	9	NOX (lb/hr)	30.10	28.36
11/2/11	16:57	7	NOX (lb/hr)	28.60	28.36
11/29/11	1:19	23	NOX (lb/hr)	30.10	28.36
11/29/11	20:48	7	NOX (lb/hr)	28.90	28.36
11/29/11	21:03	3	NOX (lb/hr)	28.40	28.36
12/1/11	12:39	26	NOX (lb/hr)	31.30	28.36
12/28/11	22:58	17	NOX (lb/hr)	28.60	28.36
1/14/12	8:57	172	NOX (lb/hr)	42.80	28.36
1/14/12	12:45	349	NOX (lb/hr)	44.20	28.36
2/10/12	5:36	18	NOX (lb/hr)	30.10	28.36
2/12/12	12:23	116	NOX (lb/hr)	33.80	28.36
2/20/12	23:10	9	NOX (lb/hr)	29.00	28.36
2/23/12	10:16	13	NOX (lb/hr)	28.60	28.36
3/4/12	19:00	19	NOX (lb/hr)	29.10	28.36
3/4/12	19:22	4	NOX (lb/hr)	28.50	28.36
3/6/12	7:21	8	NOX (lb/hr)	30.20	28.36
3/11/12	13:21	1	NOX (lb/hr)	28.40	28.36
3/13/12	9:17	3	NOX (lb/hr)	28.50	28.36
3/13/12	9:27	9	NOX (lb/hr)	28.70	28.36
3/22/12	17:24	3	NOX (lb/hr)	28.50	28.36
3/22/12	12:57	60	NOX (lb/hr)	32.10	28.36
3/25/12	6:49	3	NOX (lb/hr)	28.50	28.36
4/4/12	2:54	5	NOX (lb/hr)	28.50	28.36
4/11/12	7:09	7	NOX (lb/hr)	28.70	28.36
4/17/12	19:50	30	NOX (lb/hr)	30.10	28.36
4/28/12	10:13	29	NOX (lb/hr)	29.60	28.36
4/28/12	11:13	55	NOX (lb/hr)	32.20	28.36
4/28/12	13:05	15	NOX (lb/hr)	28.80	28.36
4/29/12	1:15	30	NOX (lb/hr)	31.20	28.36
4/29/12	1:56	17	NOX (lb/hr)	30.30	28.36
4/29/12	8:57	57	NOX (lb/hr)	36.30	28.36
4/29/12	14:13	41	NOX (lb/hr)	30.20	28.36
4/29/12	20:38	11	NOX (lb/hr)	29.50	28.36
4/30/12	15:48	32	NOX (lb/hr)	32.10	28.36
4/30/12	21:35	23	NOX (lb/hr)	29.40	28.36
5/1/12	6:25	22	NOX (lb/hr)	30.20	28.36
5/1/12	7:56	59	NOX (lb/hr)	35.50	28.36
5/1/12	12:26	85	NOX (lb/hr)	31.30	28.36



5/1/12	14:02	5	NOX (lb/hr)	28.50	28.36
5/1/12	17:38	50	NOX (lb/hr)	31.40	28.36
5/1/12	22:46	24	NOX (lb/hr)	29.30	28.36
5/2/12	6:15	58	NOX (lb/hr)	31.80	28.36
5/2/12	19:56	2	NOX (lb/hr)	28.40	28.36
5/2/12	23:38	8	NOX (lb/hr)	28.60	28.36
5/3/12	3:23	59	NOX (lb/hr)	32.90	28.36
5/3/12	8:17	17	NOX (lb/hr)	29.70	28.36
5/5/12	17:56	8	NOX (lb/hr)	28.70	28.36
5/6/12	7:16	33	NOX (lb/hr)	32.40	28.36
5/6/12	18:15	23	NOX (lb/hr)	29.20	28.36
5/7/12	4:34	18	NOX (lb/hr)	30.90	28.36
5/8/12	10:09	134	NOX (lb/hr)	38.30	28.36
5/8/12	13:24	30	NOX (lb/hr)	30.30	28.36
5/8/12	16:19	121	NOX (lb/hr)	34.00	28.36
5/9/12	9:02	21	NOX (lb/hr)	30.00	28.36
5/11/12	22:10	45	NOX (lb/hr)	31.30	28.36
5/12/12	4:37	37	NOX (lb/hr)	29.90	28.36
5/14/12	2:12	43	NOX (lb/hr)	30.00	28.36
5/14/12	7:14	6	NOX (lb/hr)	28.80	28.36
5/14/12	21:40	13	NOX (lb/hr)	29.40	28.36
5/18/12	7:05	7	NOX (lb/hr)	29.10	28.36
5/22/12	22:45	11	NOX (lb/hr)	29.10	28.36
5/25/12	7:37	29	NOX (lb/hr)	29.00	28.36
5/25/12	17:27	16	NOX (lb/hr)	29.10	28.36
5/26/12	1:57	57	NOX (lb/hr)	34.40	28.36
5/26/12	21:53	72	NOX (lb/hr)	37.00	28.36
5/28/12	15:46	10	NOX (lb/hr)	29.20	28.36
5/28/12	16:24	14	NOX (lb/hr)	31.90	28.36
5/29/12	3:46	42	NOX (lb/hr)	29.70	28.36
5/29/12	11:43	10	NOX (lb/hr)	29.30	28.36
5/29/12	17:10	44	NOX (lb/hr)	32.20	28.36
5/30/12	9:45	24	NOX (lb/hr)	29.50	28.36
5/30/12	12:15	32	NOX (lb/hr)	30.40	28.36
6/2/12	7:56	92	NOX (lb/hr)	36.10	28.36
6/2/12	20:47	82	NOX (lb/hr)	39.80	28.36
6/3/12	0:04	53	NOX (lb/hr)	32.30	28.36
6/3/12	12:03	1	NOX (lb/hr)	28.40	28.36
6/4/12	0:14	13	NOX (lb/hr)	29.30	28.36
6/4/12	18:57	84	NOX (lb/hr)	35.70	28.36
6/5/12	15:41	48	NOX (lb/hr)	30.80	28.36
6/7/12	7:02	47	NOX (lb/hr)	32.20	28.36
6/9/12	0:33	36	NOX (lb/hr)	31.90	28.36

6/9/12	12:48	10	NOX (lb/hr)	28.50	28.36
6/10/12	3:55	15	NOX (lb/hr)	28.60	28.36
6/13/12	8:47	11	NOX (lb/hr)	29.00	28.36
6/17/12	6:47	23	NOX (lb/hr)	32.00	28.36
6/21/12	17:42	19	NOX (lb/hr)	28.80	28.36
6/22/12	12:59	35	NOX (lb/hr)	29.90	28.36
6/25/12	6:00	8	NOX (lb/hr)	30.50	28.36
6/28/12	15:35	58	NOX (lb/hr)	31.10	28.36
7/1/12	13:32	9	NOX (lb/hr)	28.80	28.36
7/2/12	6:46	8	NOX (lb/hr)	28.60	28.36
8/30/12	14:44	49	NOX (lb/hr)	49.00	28.36
8/30/12	16:21	30	NOX (lb/hr)	31.40	28.36
11/2/12	0:18	503	NOX (lb/hr)	37.30	28.36
11/2/12	10:40	6	NOX (lb/hr)	28.50	28.36
11/5/12	7:30	59	NOX (lb/hr)	31.00	28.36
11/5/12	23:15	32	NOX (lb/hr)	30.40	28.36
11/23/12	14:28	5	NOX (lb/hr)	28.50	28.36
1/10/13	12:19	26	NOX (lb/hr)	29.20	28.36
1/22/13	17:18	66	NOX (lb/hr)	45.90	28.36
1/22/13	23:18	3	NOX (lb/hr)	28.50	28.36
1/23/13	9:07	32	NOX (lb/hr)	31.10	28.36
1/23/13	9:45	8	NOX (lb/hr)	29.60	28.36
1/31/13	12:50	5	NOX (lb/hr)	28.90	28.36
8/13/13	13:19	5	NOX (lb/hr)	28.80	28.36
10/14/13	6:00	12	NOX (lb/hr)	32.30	28.36
10/28/13	7:07	23	NOX (lb/hr)	30.40	28.36
10/28/13	15:00	60	NOX (lb/hr)	35.30	28.36
10/30/13	5:11	34	NOX (lb/hr)	30.30	28.36
1/6/14	11:08	8	NOX (lb/hr)	28.50	28.36
1/6/14	14:47	12	NOX (lb/hr)	28.60	28.36
1/22/14	2:39	25	NOX (lb/hr)	29.80	28.36
1/24/14	21:03	15	NOX (lb/hr)	29.20	28.36
2/6/14	18:36	29	NOX (lb/hr)	29.40	28.36
2/8/14	3:57	99	NOX (lb/hr)	30.30	28.36
2/9/14	22:16	16	NOX (lb/hr)	28.50	28.36
2/11/14	18:46	52	NOX (lb/hr)	29.40	28.36
2/19/14	16:59	26	NOX (lb/hr)	29.80	28.36
2/20/14	22:54	42	NOX (lb/hr)	30.50	28.36
2/22/14	5:04	43	NOX (lb/hr)	37.50	28.36
2/22/14	5:49	4	NOX (lb/hr)	28.50	28.36
2/22/14	14:55	15	NOX (lb/hr)	29.20	28.36
2/26/14	12:55	6	NOX (lb/hr)	28.70	28.36
2/27/14	7:00	8	NOX (lb/hr)	29.40	28.36

3/14/14	6:53	7	NOX (lb/hr)	28.80	28.36
3/16/14	12:58	8	NOX (lb/hr)	28.70	28.36
3/30/14	16:26	10	NOX (lb/hr)	28.70	28.36
4/3/14	10:37	3	NOX (lb/hr)	28.50	28.36
4/21/14	20:33	9	NOX (lb/hr)	28.50	28.36
4/22/14	22:51	63	NOX (lb/hr)	40.50	28.36
5/13/14	6:56	8	NOX (lb/hr)	35.40	28.36
5/20/14	13:24	18	NOX (lb/hr)	29.00	28.36
5/20/14	22:23	34	NOX (lb/hr)	30.40	28.36
6/1/14	5:27	29.2	NOX (lb/hr)	29.20	28.36
6/14/14	5:58	10	NOX (lb/hr)	28.80	28.36
6/22/14	10:50	15	NOX (lb/hr)	29.40	28.36
7/16/14	14:34	48	NOX (lb/hr)	30.80	28.36
7/16/14	18:10	11	NOX (lb/hr)	29.70	28.36
7/17/14	1:17	4	NOX (lb/hr)	28.50	28.36
7/25/14	3:06	57	NOX (lb/hr)	32.70	28.36
8/3/14	15:24	17	NOX (lb/hr)	29.20	28.36
8/14/14	5:14	21	NOX (lb/hr)	29.00	28.36
8/21/14	7:25	51	NOX (lb/hr)	36.00	28.36

Heritage has failed to comply with the Clean Air Act and the Ohio Air Pollution Control Act by failing and continuing to fail to meet the requirements of their short-term NO<sub>x</sub> limitations within their Title V permit as set forth above. Heritage is liable for up to 37,500 dollars in penalties for *each day* that *each violation* occurred and continues to occur.<sup>34</sup>

#### B. Sulfur Dioxide (SO<sub>2</sub>) Violations

Excessive sulfur dioxide emissions can cause significant impacts to human health. Excess emissions of SO<sub>2</sub> increase the amount of acid rain and public exposure to harmful levels of SO<sub>2</sub>. SO<sub>2</sub> also reacts with chemicals in the air to form tiny sulfate particles. Long term exposure to high levels of SO<sub>2</sub> gas and sulfate particles can cause respiratory illness, aggravate existing heart disease, and lead to premature death. Courts have recognized that SO<sub>2</sub> emissions are “a medically recognized threat to human health” and that “high levels of pollution sustained for periods of days can kill.”<sup>35</sup>

Heritage’s Title V permit limits sulfur dioxide emissions from the stack to 11.34 pounds per hour.<sup>36</sup> The 2011, 2012, 2013, and 2014 Quarterly Excess Emission Reports submitted by Heritage

<sup>34</sup> 42 U.S.C. §§ 7413(b) and 7604(a); 40 C.F.R. §§ 19.2 and 19.4.

<sup>35</sup> *Ohio Power Co. v. US EPA*, 729 F.2d 1096, 1097-1098 (6th Cir. 1984).

<sup>36</sup> Appendix I, Final Air Pollution Control Title V Permit, Facility ID: 021502033, at 48.

indicate that on approximately 68 occasions the SO<sub>2</sub> emissions exceeded the 11.34 pounds per hour standard, as outlined in the table below:

Table 2: SO<sub>2</sub> Emissions Exceedances

Date	Time	Duration (min.)	Violation Type	Reading (Max.)	Max. Limit
5/2/11	7:40	13	SO2 (lb/hr)	14.40	11.34
5/5/11	14:24	31	SO2 (lb/hr)	11.60	11.34
5/27/11	14:24	34	SO2 (lb/hr)	13.60	11.34
5/31/11	10:26	162	SO2 (lb/hr)	28.00	11.34
6/3/11	17:56	116	SO2 (lb/hr)	20.10	11.34
6/3/11	22:07	68	SO2 (lb/hr)	30.30	11.34
6/4/11	7:01	66	SO2 (lb/hr)	28.70	11.34
6/6/11	7:18	63	SO2 (lb/hr)	18.40	11.34
6/11/11	7:13	26	SO2 (lb/hr)	12.60	11.34
6/16/11	11:47	47	SO2 (lb/hr)	11.90	11.34
6/17/11	15:02	97	SO2 (lb/hr)	35.30	11.34
6/17/11	21:03	17	SO2 (lb/hr)	11.90	11.34
8/6/11	1:47	52	SO2 (lb/hr)	15.70	11.34
8/15/11	9:00	50	SO2 (lb/hr)	13.50	11.34
8/19/11	5:12	35	SO2 (lb/hr)	11.60	11.34
8/21/11	16:50	54	SO2 (lb/hr)	17.10	11.34
8/26/11	9:53	50	SO2 (lb/hr)	13.50	11.34
8/29/11	7:01	21	SO2 (lb/hr)	55.50	11.34
8/29/11	15:23	51	SO2 (lb/hr)	16.60	11.34
9/4/11	8:30	78	SO2 (lb/hr)	31.90	11.34
9/4/11	11:44	62	SO2 (lb/hr)	22.50	11.34
9/6/11	17:36	56	SO2 (lb/hr)	18.40	11.34
9/8/11	20:43	50	SO2 (lb/hr)	13.40	11.34
9/12/11	11:38	81	SO2 (lb/hr)	33.10	11.34
9/13/11	18:05	3	SO2 (lb/hr)	11.50	11.34
9/13/11	18:17	15	SO2 (lb/hr)	13.30	11.34
9/13/11	18:55	7	SO2 (lb/hr)	12.80	11.34
11/21/11	16:55	14	SO2 (lb/hr)	12.00	11.34
1/3/12	6:19	38	SO2 (lb/hr)	14.30	11.34
1/3/12	9:16	48	SO2 (lb/hr)	15.60	11.34
1/13/12	6:12	70	SO2 (lb/hr)	16.50	11.34
2/6/12	6:25	46	SO2 (lb/hr)	18.40	11.34
2/10/12	6:49	41	SO2 (lb/hr)	20.20	11.34
2/17/12	7:21	10	SO2 (lb/hr)	11.50	11.34
2/24/12	21:50	49	SO2 (lb/hr)	17.30	11.34
3/16/12	23:50	6	SO2 (lb/hr)	11.60	11.34



3/23/12	20:50	6	SO2 (lb/hr)	11.90	11.34
4/8/12	11:17	36	SO2 (lb/hr)	12.10	11.34
6/13/12	5:48	4	SO2 (lb/hr)	11.80	11.34
7/13/12	8:50	62	SO2 (lb/hr)	22.40	11.34
11/11/12	12:03	76	SO2 (lb/hr)	44.40	11.34
11/14/12	9:58	43	SO2 (lb/hr)	14.20	11.34
11/19/12	0:59	32	SO2 (lb/hr)	14.30	11.34
12/29/12	16:47	69	SO2 (lb/hr)	30.10	11.34
1/11/13	17:42	35	SO2 (lb/hr)	14.00	11.34
1/15/13	9:59	30	SO2 (lb/hr)	14.30	11.34
1/15/13	12:25	29	SO2 (lb/hr)	12.60	11.34
1/21/13	3:00	27	SO2 (lb/hr)	12.60	11.34
1/22/13	19:31	72	SO2 (lb/hr)	34.40	11.34
2/4/13	3:20	29	SO2 (lb/hr)	15.00	11.34
2/18/13	22:34	44	SO2 (lb/hr)	15.90	11.34
3/27/13	3:47	3	SO2 (lb/hr)	11.40	11.34
3/27/13	4:14	61	SO2 (lb/hr)	24.90	11.34
6/2/13	20:44	4	SO2 (lb/hr)	11.50	11.34
6/7/13	15:39	48	SO2 (lb/hr)	14.10	11.34
8/3/13	8:15	22	SO2 (lb/hr)	12.00	11.34
9/2/13	3:40	51	SO2 (lb/hr)	17.00	11.34
10/25/13	3:20	47	SO2 (lb/hr)	13.80	11.34
1/11/14	7:27	33	SO2 (lb/hr)	14.10	11.34
1/16/14	23:01	48	SO2 (lb/hr)	15.40	11.34
1/28/14	18:06	48	SO2 (lb/hr)	15.20	11.34
2/8/14	2:18	44	SO2 (lb/hr)	14.30	11.34
2/21/14	15:39	57	SO2 (lb/hr)	17.90	11.34
5/13/14	6:57	4	SO2 (lb/hr)	15.40	11.34
5/25/14	19:13	36	SO2 (lb/hr)	12.10	11.34
6/14/14	5:30	106	SO2 (lb/hr)	22.90	11.34
9/25/14	23:07	10	SO2 (lb/hr)	11.90	11.34

Heritage has failed to comply with the Clean Air Act and the Ohio Air Pollution Control Act by failing and continuing to fail to meet the requirements of their short-term SO<sub>2</sub> limitations within their Title V permit as set forth above. Heritage is liable for up to 37,500 dollars in penalties for *each day that each violation* occurred and continues to occur.<sup>37</sup>

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<sup>37</sup> 42 U.S.C. § § 7413(b) and 7604(a); 40 C.F.R. § § 19.2 and 19.4.

### C. Opacity Violations

Opacity is a measure of soot in the gas stream emitted from the stack. Opacity standards are designed to control particulate matter. Violations of the particulate matter standards and control requirements increase public exposure to particulate matter that may be hazardous to human health. Once inhaled, particulate matter, especially fine particulate matter, contributes to heart and respiratory problems, lung damage, and premature deaths.<sup>38</sup> In addition, particles can be carried over long distances and settle on the ground or water, which could deplete nutrients in soil, make lakes and streams acidic, and damage sensitive plants and crops.<sup>39</sup>

Heritage's Title V Permit and the federally-approved Ohio SIP<sup>40</sup> at OAC Rule 3745-17-07(A) limit visible particulate emissions from the stack to 20% opacity as a 6-minute average.<sup>41</sup> Unlike the continuous compliance standards for NO<sub>x</sub> and SO<sub>2</sub>, the Title V Permit, as well as OAC Rule 3745-17-07(A)(2) and (3) provide certain exemptions to Heritage's opacity limits, including startup, shut down, and malfunction exemptions.<sup>42</sup>

Save Our County is notifying Heritage of 17 separate violations of the opacity limits occurring from January 2011 to February of 2015, according to the Quarterly Excess Emission Reports. There were additional violations of the Opacity limitation that were reported as exemptions pursuant to OAC Rule 3745-17-07(A)(2) and (3). The following table lists opacity violations that were clearly not exempt pursuant to the rule:

Table 3: Opacity Limit Violations

Date	Time	Duration (min.)	Violation Type	Reading (Max.)	Max. Limit	Exempt?
5/17/11	7:30	6	Opacity (%)	21.90	20.00	No
10/1/11	20:42	6	Opacity (%)	53.20	20.00	No
10/3/11	1:24	6	Opacity (%)	24.20	20.00	No
1/5/12	5:24	6	Opacity (%)	27.70	20.00	No
1/13/12	6:54	6	Opacity (%)	27.20	20.00	No
1/14/12	21:12	6	Opacity (%)	35.80	20.00	No

<sup>38</sup> See <http://www3.epa.gov/pm/health.html>

<sup>39</sup> *Id.*

<sup>40</sup> 59 Fed. Reg. 27464.

<sup>41</sup> Appendix I, Final Air Pollution Control Title V Permit, Facility ID: 021502033, at 48.

<sup>42</sup> *Id.*

2/6/12	6:06	6	Opacity (%)	33.80	20.00	No
2/10/12	6:42	6	Opacity (%)	34.80	20.00	No
2/10/12	19:12	6	Opacity (%)	26.30	20.00	No
4/3/12	12:30	12	Opacity (%)	46.90	20.00	No
9/5/12	6:54	6	Opacity (%)	22.80	20.00	No
11/7/12	10:06	6	Opacity (%)	22.20	20.00	No
8/11/13	8:54	6	Opacity (%)	21.20	20.00	No
10/25/13	3:12	6	Opacity (%)	20.30	20.00	No
2/8/14	2:12	12	Opacity (%)	25.30	20.00	No
3/5/14	9:36	6	Opacity (%)	20.50	20.00	No
2/7/15	18:36	6	Opacity (%)	23.00	10.00	No

Heritage has not complied with the Clean Air Act by failing and continuing to fail to meet the opacity limitations within its Title V permit and the Ohio Air Pollution Control Act, as set forth above. Save Our County is putting Heritage on Notice for the 17 violations referenced above. Heritage is liable for up to 37,500 dollars in penalties for *each day* that *each violation* occurred and continues to occur.<sup>43</sup>

D. Heritage is currently failing to properly report its NO<sub>x</sub> and SO<sub>2</sub> exceedances

In addition to its self-reported exceedances of NO<sub>x</sub>, SO<sub>2</sub>, Heritage has recently consistently failed to properly report those exceedances in violation of its Title V permit. Pursuant to their Title V permit, Heritage is required to:

[s]ubmit reports within 30 days following the end of each calendar quarter to the Ohio EPA Northeast District Office documenting all instances of emissions in excess of any applicable limit specified in this permit and any other applicable rules or regulations. The report shall

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<sup>43</sup> 42 U.S.C. § 7413(b) and 7604(a); 40 C.F.R. §§ 19.2 and 19.4.

document the date, commencement and completion times, duration, and magnitude of each exceedance, as well as, the reason (if known) and the corrective actions taken (if any) for each exceedance. Excess emissions shall be reported in units of the applicable standard(s).<sup>44</sup>

Compliance with emissions limitations for SO<sub>2</sub> and NO<sub>x</sub> means that Heritage cannot exceed 11.34 pounds per hour and 49.69 pounds per hour, respectively, and it is determined by operation and reporting from Heritage's continuous emissions monitoring systems. Heritage's Title V permit requires maintenance of continuous emissions monitoring systems records, including, specifically, emissions of the appropriate averaging period, which is specified as hourly.<sup>45</sup>

As evidenced throughout this Notice, Heritage has been unable to comply with the SO<sub>2</sub> and NO<sub>x</sub> short-term limitations required in their Title V permit. Instead of finding ways to comply with these standards, Heritage instead requested the Ohio EPA to allow them submit their monitoring data as three-hour block averages, instead of the required one-hour average.<sup>46</sup> Such a modification would allow Heritage a greater number of lower, in-compliance continuous monitoring measurements to be weighed against emissions spikes that take Heritage out of compliance with their hourly emissions standards. It is wholly inapposite of the purposes of the CAA to allow a facility to come into compliance by simply relaxing the compliance standards. Moreover, it is baffling that a facility that has had consistent compliance issues should be permitted to fix violations of its permits by merely diluting its reporting requirements. Understandably, Heritage was never permitted to expand the compliance-averaging period to offset the accuracy and frequency of continuous monitoring, but started reporting as if it had received proper approval for the requested modification.

Heritage cannot claim a permit shield for making such significant changes to its monitoring and reporting practices. Significant modifications procedures are utilized for permit modification requests to relax reporting or recordkeeping terms or conditions.<sup>47</sup> As evidenced by Heritage's most recent reports, they have changed their reporting of NO<sub>x</sub> and SO<sub>2</sub> exceedances from hourly averages to three-hour averages. Yet, to Save Our County's knowledge, Heritage did not receive approval to report on a three-hour average basis, nor did it go through the proper procedures to affect a permit modification under OAC Rule 3745-77-08, including public participation and review by affected states.<sup>48</sup>

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<sup>44</sup> Appendix I, Final Air Pollution Control Title V Permit, Facility ID: 021502033, Part C.2.(e)(3)(a).

<sup>45</sup> See Appendix I, Final Air Pollution Control Title V Permit, Facility ID: 021502033, Part C.2.(d)(5)c.ii (the section also clarifies that opacity is maintained as 6 minute averages); see also 40 C.F.R. § 60.13(h)(1).

<sup>46</sup> Appendix K, Letter from Heritage to Ohio EPA, Status Update: SO<sub>2</sub> and NO<sub>x</sub>, dated August 4, 2014, at 1.

<sup>47</sup> OAC Rule 3745-77-08(3)(a)(ii).

<sup>48</sup> OAC Rule 3745-77-08(3)(c).



In their 2014 Fourth Quarter Excess Emission Report and their First Quarter 2015 Excess Emissions Report, Heritage only reported their SO<sub>2</sub> and NO<sub>x</sub> emissions as three-hour block averages.<sup>49</sup> As such, Heritage has failed to properly report their SO<sub>2</sub> and NO<sub>x</sub> emissions as pounds per hour, as an hourly average, in violation of their Title V permit and the CAA. Importantly, this change in reporting is improperly concealing Heritage's violations, and circumventing the purpose of emission exceedance reporting. It is likely that the only reason Heritage had no self-reported violations of their short-term hourly emissions standards for NO<sub>x</sub> and SO<sub>2</sub> was because of their change in reporting. For instance, Heritage submitted a report to Ohio EPA containing three-hour block averages of Continuous Emissions Monitoring results for SO<sub>2</sub> for a period covering January 1, 2013 through December 31, 2014, and the data showed that, under this vastly different reporting scheme, there was only one exceedance of the SO<sub>2</sub> limit.<sup>50</sup> However, as is evidenced in this Notice, Heritage actually exceeded their short-term hourly emission limitation for SO<sub>2</sub> approximately 23 times during that same period. Thus, it stands to reason that Heritage has also had considerably more emissions exceedances that were not reported in their most recent submissions.

Heritage has failed and continues to fail to meet its reporting requirements within its Title V permit, as set forth above, in violation of the Clean Air Act. The violation for failure to properly report continues each day until the report is properly submitted. Heritage is liable for up to 37,500 dollars in penalties for *each day* that *each violation* has occurred and continues to occur.<sup>51</sup>

#### IV. Conclusion

In conclusion, Heritage has violated and will continue to violate the Clean Air Act and the Ohio Air Pollution Control Act through emissions exceedances from its hazardous waste incinerator located in East Liverpool, Ohio. Unless appropriate action is taken to comply with the requirements of the Clean Air Act and the Ohio Air Pollution Control Act, and ensure that violations do not occur in the future, Save Our County intends to file a citizen suit upon 60 days or shortly thereafter from the date of this notice letter, as permitted by Section 304(b) of the CAA, in federal court for the violations alleged in this notice. In that action, Save Our County will seek redress for the violations described in this letter, including declaratory and injunctive relief, costs and attorney's fees pursuant to Section 304(d), civil penalties pursuant to Section 304(a), and other appropriate relief.

The violations described above represent only the information that is currently available to us. Each of the violations listed above have been repeated. Heritage is now on notice that Save Our County intends to sue for all violations, including those yet to be uncovered and those committed subsequent to the date of this notice of intent to sue.

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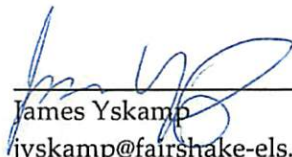
<sup>49</sup> The 2014 Fourth Quarter Excess Emission Report and the 2015 First Quarter Excess Emission Report are attached as Appendix L.

<sup>50</sup> Appendix M, NOX\_SOX 3-HR Block Excess Emission Report, dated January 15, 2015.

<sup>51</sup> 42 U.S.C. § 7413(b) and 7604(a); 40 C.F.R. §§ 19.2 and 19.4.

If you have any questions regarding the allegations in this notice, believe any of the information in this notice to be in error, wish to discuss any exchange of information showing the information in this notice to be incorrect, or would like to discuss settlement of this matter prior to litigation, please contact the undersigned counsel representing Save Our County, Inc., at the number listed below.

Sincerely,

  
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# TABLE OF APPENDICES

<b><u>Appendix A</u></b>	.....	Heritage Thermal Services' Title V PTO Application, 0215020233, submitted July 15, 2013.
<b><u>Appendix B</u></b>	.....	Ohio EPA Notice of Violation, dated November 16, 2009.
<b><u>Appendix C</u></b>	.....	Ohio EPA Notice of Violation, dated June 14, 2010.
<b><u>Appendix D</u></b>	.....	Ohio EPA Notice of Violation, dated April 19, 2010.
<b><u>Appendix E</u></b>	.....	Ohio EPA Notice of Violations, dated February 15, 2011.
<b><u>Appendix F</u></b>	.....	Ohio EPA Notice of Violation, dated June 3, 2011.
<b><u>Appendix G</u></b>	.....	Ohio EPA Notice of Violation, dated August 5, 2013.
<b><u>Appendix H</u></b>	.....	US EPA Finding of Violation, dated March 23, 2015.
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<b><u>Appendix J</u></b>	.....	Second Quarter 2011 through Third Quarter 2014 Excess Emission Reports.
<b><u>Appendix K</u></b>	.....	Letter from Heritage to Ohio EPA, Status Update: SO <sub>2</sub> and NO <sub>x</sub> , dated August 4, 2014.
<b><u>Appendix L</u></b>	.....	Excess Emission Reports for the Fourth Quarter of 2014 and the First Quarter of 2015.
<b><u>Appendix M</u></b>	.....	NOX_SOX 3-HR Block Excess Emission Report, dated January 15, 2015.